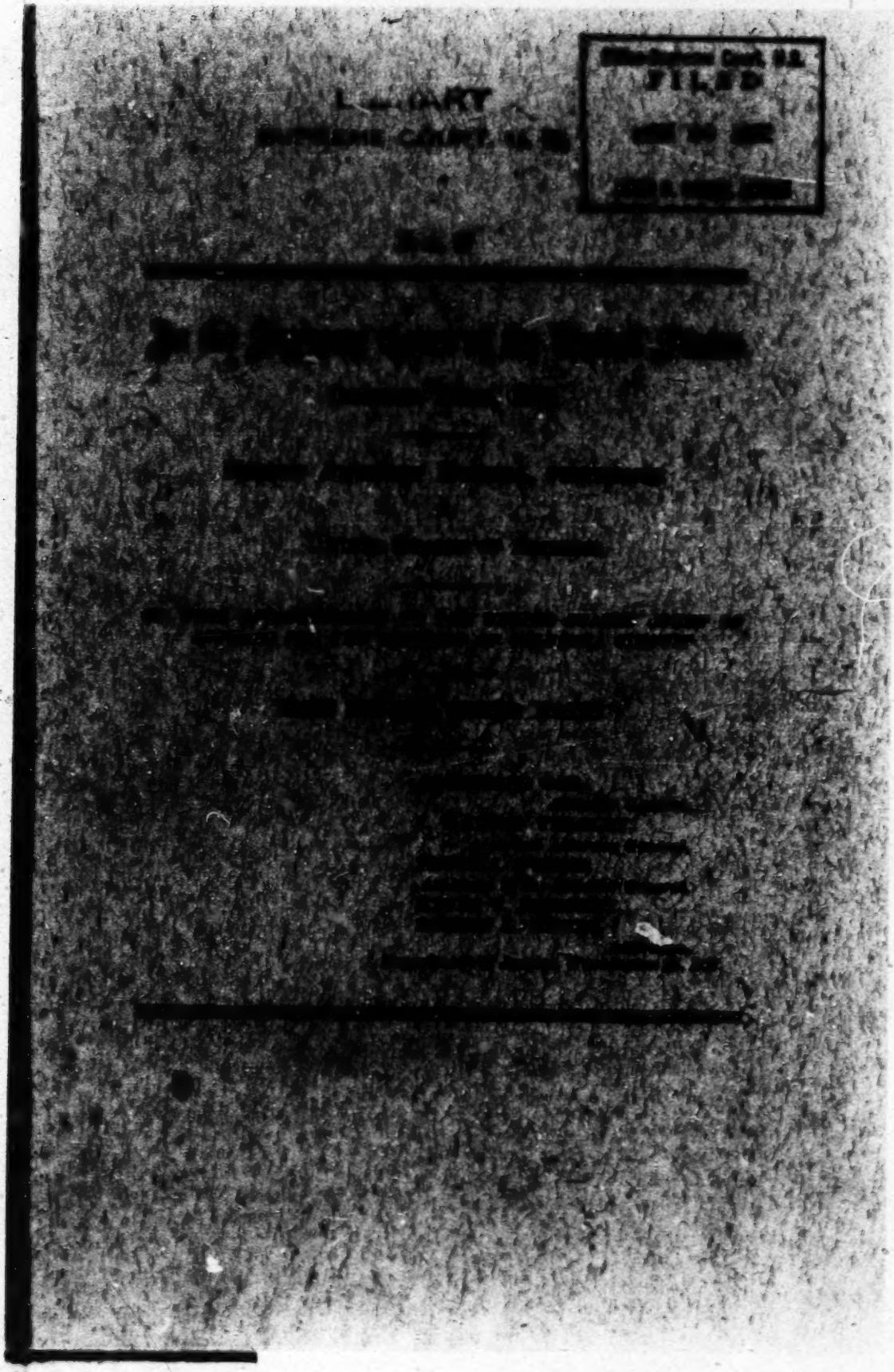

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619655—61——1

## CITATIONS

# In the Supreme Court of the United States

OCTOBER TERM, 1961

No. 8

NORTON ANTHONY RUSSELL, PETITIONER

*v.*

UNITED STATES OF AMERICA

*ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT*

## BRIEF FOR THE UNITED STATES

### OPINION BELOW

The opinion of the Court of Appeals for the District of Columbia Circuit is reported at 280 F. 2d 688.

### JURISDICTION

The judgment of the court of appeals was entered on June 18, 1960. The petition for a writ of certiorari was granted on June 19, 1961 (R. 169; 366 U.S. 960). The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

### QUESTIONS PRESENTED

1. Whether petitioner could properly be convicted for refusing to answer specific questions as to his Communist activities because he stated his refusal to

answer any question on Communism at the start of his appearance as a witness before a subcommittee of the House Un-American Activities Committee.

2. Whether the trial court correctly held that, as a matter of law, the subcommittee was properly constituted.

3. Whether the trial court erred in holding, as a matter of law, that the inquiry had a valid legislative purpose.

4. Whether the government proved that the questions were pertinent to the subject under inquiry.

5. Whether a defendant who is indicted by a grand jury composed, in part, of federal employees is entitled to dismissal of the indictment or a hearing on the basis of general allegations that such jurors are biased and afraid as the result of the government security program.

6. Whether the indictment was invalid because it failed to specify the subject under inquiry and the pertinency of the questions to that subject.

## STATUTE INVOLVED

The statute involved is 2 U.S.C. 192, which appears at page 4 of petitioner's brief.

## STATEMENT

Petitioner was charged in a sixteen-count indictment with having unlawfully refused to answer sixteen questions pertinent to matters under inquiry by a subcommittee of the Committee on Un-American Activities of the House of Representatives (R. 2–5).

He was convicted on counts 2, 3, and 4[1] (R. 164), and sentenced to thirty days' imprisonment and a fine of five hundred dollars on each count, the sentences to run concurrently (R. 29). On appeal, petitioner's conviction was affirmed (R. 166–167).

The pertinent facts may be summarized as follows:

Petitioner was called on September 15, 1954, before a subcommittee of the House Committee on Un-American Activities holding hearings in Dayton, Ohio, as part of its investigation into Communist activity in the Dayton-Yellow Springs[2] area (R. 33–34, 41–42).[3] Although the subcommittee conducting the Dayton hearings was composed of three members, only the chairman was present when petitioner appeared (R. 61, 108). Counsel for the Committee testified at the trial that petitioner was called, despite the fact that a quorum was not present and the subcommittee was not a validly operating subcommittee, because there was some prospect of petitioner's being a "cooperative" witness (R. 68, 109).

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[1] The trial court directed acquittal on the remaining counts after they were abandoned by the government because the subcommittee failed to order petitioner to answer these other questions after his initial refusal to answer, or, as to one count, the question was subsequently answered by petitioner at the hearing (R. 131–132, 153).

[2] Dayton and Yellow Springs are approximately twenty miles apart (R. 129).

[3] The opening statement of the chairman of the subcommittee giving the purpose of the Dayton hearings is contained in Government Exhibit 3 (Hearings Before the House Committee on Un-American Activities: *Investigation of Communist Activities in the Dayton, Ohio Area* (hereinafter "Hearings"), 83d Cong., 2d Sess.) and is set forth in the record at pp. 38–42.

Petitioner was not cooperative, although he answered the preliminary questions asked him. He testified that he graduated from Antioch College in 1942, and that he worked in Dayton from 1942 until 1948, and from 1948 until the hearings, at Vernay Laboratories in Yellow Springs (Hearings, p. 7009). He stated that, while a student at Antioch, he knew a Herbert Reed but did not know Reed's occupation (*id.* at p. 7011). The Committee counsel told petitioner that he had been identified by Arthur Strunk during the hearings as a "dues paying member of the Communist Party" in Dayton before moving to Yellow Springs in 1948 (*ibid.*). Petitioner objected on the ground of the First Amendment when asked several questions relating to Communist activities (*id.* at pp. 7010–7011).

Upon petitioner's refusal to answer these questions, counsel for the Committee excused the witness (R. 63–64). Though the witness was not kept under subpoena, the intention of Committee counsel was to report to the Committee the other questions he wished to ask petitioner so that the Committee could decide whether or not petitioner should be recalled (R. 64). Committee counsel reported to the Committee that he felt that petitioner had been influenced during the hearings in Dayton by the fact that his appearance was not before a legally constituted subcommittee and that he might cooperate if called before the Committee in Washington (R. 113).

Before petitioner's appearance at the hearings in Dayton, Arthur Strunk, who had become a Party member at the request of the F.B.I. (R. 45), testified

that petitioner was a Party member; that several Party meetings had been held in petitioner's house; that he had paid Party dues to Strunk; and that petitioner had not been a very active Party member after he started working in Yellow Springs in 1948 (R. 48–49). The subcommittee also heard testimony in Dayton concerning the organizational structure of the Dayton section of the Communist Party (R. 46–47); Communist infiltration of the leadership of locals of the United Electrical, Radio and Machine Workers Union in the area (R. 50–56); and the existence of a Communist youth organization, the Young Communist League, at Antioch College which is located at Yellow Springs (R. 123). The subcommittee was told that the Young Communist League at Antioch was organized and run by Herbert Reed,[4] a Communist Party organizer in the Dayton area; that Reed contacted members of the League after graduation to bring them into the Dayton section of the Party; that many had been brought into active Party work; and that at least one such member had also been employed by the United Electrical Workers[5] (R. 112, 113, 123, 127–128). The Committee considered it important to pursue this information in order to understand Communist activ-

[4] Reference of the Committee counsel to "John" Reed (R. 112) was apparently an error, since this is the only time a John Reed is mentioned as a Party organizer in Dayton, and there are repeated references to Herbert Reed as a Party organizer (see, *e.g.*, R. 49, 62, 66).

[5] In addition, the Committee had information that several former members of the Young Communist League had become prominent in the United Electrical Workers, although it had no knowledge of subsequent Communist Party activity on their part (R. 114).

ity in the Dayton-Yellow Springs area (R. 113–114, 127).

While the Committee had knowledge of the activities of the Young Communist League at Antioch in 1942 and of a Communist Party group in Yellow Springs in 1945 and 1946, it had no information concerning the period from 1942 to 1945. The Committee desired to establish the "missing link" between 1942 and 1945, especially since testimony indicated that, while there was no faculty participation in 1942, in 1945 and 1946 members of both the faculty and student body of Antioch College were members of the Communist Party cell at Yellow Springs (R. 112, 125, 126). Therefore, the Committee was particularly anxious to obtain this information which it believed petitioner could supply (R. 112, 123, 126–128). Committee counsel also testified that the Committee desired to know more from petitioner about a Walter Lohman (R. 113–114), a labor official at Vernay Laboratories, who had been identified by Strunk as a member of the Communist Party (R. 52, 56; Hearings, pp. 6832, 6856).

Petitioner testified in Washington on November 17, 1954, during an afternoon session conducted by a three-man subcommittee (R. 85, 89), which had been appointed during the noon recess by the Committee Chairman (R. 85, 87). Notice of the appointment, which the Chairman had made by telephone (R. 87), was entered in the record of the hearings at the beginning of the session at which petitioner testified (R. 84–87; Gov. Ex. 6), and announcement of this fact was made at the hearing (R. 120). At no time during the course of the hearing did petitioner object to

the composition or appointment of the subcommittee before which he appeared (R. 121–131).

After answering preliminary questions at this hearing, petitioner said that he knew John and Bebe Ober while he was a student at Antioch College (R. 123). The Committee counsel told petitioner that they had testified before the Committee that there had been a cell of the Young Communist League at Antioch while they were attending that college; that the cell was organized and conducted by Herbert Reed, who was not connected with the College; and that Herbert Reed was a Party organizer in the Dayton area (R. 123). Petitioner testified that he knew Herbert Reed but had not seen him since the middle nineteen-forties (R. 124). After petitioner refused to answer as to the occasion on which he had last seen Herbert Reed on the ground of the First Amendment (count 1, which was dismissed), the Committee counsel stated that the Committee had information from Mr. and Mrs. Ober as to Herbert Reed's connection with the cell of the Young Communist League at Antioch up to 1942 and had heard testimony from Professor Robert Metcalf that Herbert Reed was a member of a Party group in 1945 and 1946 (R. 125; see Hearings, pp. 6987, 6988, 6993–6994). The Committee counsel told petitioner that the Committee did not know the Party's organizers between 1942 and 1945 and that it wanted petitioner to provide this information (R. 126). Subsequently, the Committee counsel said that Mrs. Ober had testified that she had been active in the Young Communist League at Antioch; that after she left Antioch she obtained a

position with a local union in Dayton; and that Herbert Reed approached her and "brought [her] into the Communist Party itself" (R. 127; see Hearings, p. 6992). Petitioner was then asked (R. 127):

> Now, I want to ask you whether or not Herbert Reed, after you left Antioch College, encouraged you in any manner to join the Communist Party when you saw him in the mid-forties. Whether you did or whether you didn't join at that time, did he encourage you to join?

Petitioner refused to answer again relying solely on the First Amendment (R. 127) and this refusal became the basis of count 2 of the indictment.

Committee counsel repeated that the Committee had information that Herbert Reed organized a group of students at Antioch; that he "attended every meeting," "lectured to them on Communism," and "directed their every movement"; that when the students left school he followed them; and that he got Mr. and Mrs. Ober into the Communist Party (R. 127–128). Petitioner was then asked (R. 128): "I want to know whether Herbert Reed had anything to do with your getting into the Communist Party." Petitioner refused to answer and this refusal became the basis of count 3.

The Committee counsel told petitioner that the Committee had received information during its investigation concerning the Young Communist League group at Antioch College between 1939 and 1941, but this information did not indicate that any professor at the College was associated with the group. Nevertheless, according to the Committee counsel, in 1945

and 1946 there was an organized Party group in Yellow Springs including both faculty members and students (R. 129; see Hearings, pp. 6979–6982). Petitioner was then asked (R. 129): "Do you have any knowledge of the existence of that group in 1945 or 1946?" Petitioner refused to answer, and this refusal became the basis of count 4.

Petitioner refused to answer a series of other questions as to which he was indicted (counts 5–16). Among these questions was whether he had ever attended any Communist Party meetings with Walter Lohman and whether Lohman ever attended any Party meetings in petitioner's home (counts 14 and 15) (Hearings, pp. 7086–7087).* These counts were abandoned by the government and dismissed by the trial court (see *supra*, p. 3, note 1).

## SUMMARY OF ARGUMENT

### I

Petitioner's indictment and conviction on separate counts for each refusal to answer was proper.

This Court has held in *Yates* v. *United States*, 355 U.S. 66, 73, that a witness cannot be punished for more than one contempt, even though he refuses to answer more than one question, if he states his refusal to answer "any questions" or refuses to answer "questions within a generally defined area of investigation," and the subsequent questions are within this area.

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*Petitioner first refused to answer whether he knew Lohman to be a Party member (count 14), but he subsequently stated that he did not know (Hearings, pp. 7086–7087).

Here petitioner never refused at the hearings in Washington to answer all questions or all questions on a particular subject. He merely invoked the First Amendment as to particular questions.

Even if petitioner is correct and *Yates* forbids separate punishment in these circumstances, petitioner could properly be convicted and punished for any *one* of his refusals to answer. This is in effect what happened since petitioner was given concurrent sentences on each count. Therefore, if the sentence on any one count is valid, the judgment below must be affirmed.

## II

The trial court correctly held that, as a matter of law, the subcommittee before which petitioner appeared was properly constituted. While petitioner makes a series of contentions that the trial court's determination was erroneous, these claims are not available to him since he failed to assert, when he appeared before the subcommittee, that it was improperly constituted. In any event, petitioner's claims are without merit.

A. The trial court correctly determined that the issues whether the Committee Chairman had the authority to appoint subcommittees, and whether such appointments could be made by telephone, were questions of law which should not be submitted to the jury. The issues are analogous to questions as to the requirements of a quorum and whether a committee has authority to conduct a particular investigation, which this Court decided as questions of law in *Christoffel* v. *United States*, 338 U.S. 84, and *Barenblatt* v. *United States*, 360 U.S. 109.

B. The Committee Chairman had authority to appoint subcommittees and to do so by telephone. The uncontradicted evidence shows that the Committee passed a resolution authorising its Chairman to appoint subcommittees to perform the functions of the Committee. There is no authority or reason requiring that such an appointment take any particular form or include any specific formality.

C. There was ample evidence that the subcommittee before which petitioner appeared was properly appointed. The evidence showed that the Committee Chairman telephoned one of the members of the subcommittee and told him the three members who were to constitute the subcommittee. The transcript of the hearing shows that two of the three members of the subcommittee were present when petitioner testified.

D. The trial court's instructions to the jury did confuse the appointment of an earlier subcommittee with the appointment of the subcommittee involved in this case. But it is unlikely that petitioner was seriously prejudiced since the evidence of the appointment of the subcommittee before which petitioner appeared was uncontradicted. Moreover, petitioner made no objection to the instructions, and, indeed, the only instruction he submitted on this issue was given.

## III

The trial court properly held, as a matter of law, that the subcommittee's questioning of petitioner was pursuant to a valid legislative purpose.

A. The trial court was correct in deciding this issue rather than submitting it to the jury. This Court has

repeatedly decided this issue as a matter of law. *E.g.*, *Kilbourn* v. *Thompson*, 103 U.S. 168; *Barenblatt* v. *United States*, *supra*. This is clearly correct since the question whether a committee has a valid legislative purpose, like the issue whether the First Amendment has been violated, is a legal question.

B. The Committee clearly had a valid legislative purpose in subpoenaing petitioner to testify. Petitioner argues, without any support in the evidence, that, because petitioner refused to answer questions asked by a subcommittee two months earlier, the only reason the Committee could possibly have decided to subpoena him was in order to punish him for contempt. Thus, petitioner is in effect imputing improper motives to members of the Committee without any evidentiary basis. This Court, however, has categorically refused to do this. *E.g.*, *Watkins* v. *United States*, 354 U.S. 178, 200.

Moreover, the evidence shows that the Committee recalled him because it reasonably believed that he might be more cooperative. First, the earlier appearance was before an illegally constituted subcommittee. While petitioner did not explicitly base his refusal to answer on these grounds, the Committee thought that this might have been a factor. Second, the earlier hearings left a "missing link" in the Committee's information concerning Communist activities. The Committee believed petitioner had this information and hoped to persuade petitioner to provide it. And, finally, most of the questions asked at the later hearing, including all three questions as to which he was convicted, were never asked petitioner before. Since petitioner never stated that he would refuse to answer all questions asked by the Committee, or even

all questions in a certain area, the Committee could not know he would not answer these new questions.

## IV

The government proved at petitioner's trial that the questions were pertinent to the subject under inquiry: Communist activities in the Dayton-Yellow Springs area. The transcript of the Dayton hearing at which petitioner first testified showed that this was the subject under inquiry at that hearing. At the start of the hearing in Washington—which is the hearing directly involved here—the Chairman of the Committee stated that the new hearing was a continuation of the Dayton investigation. Moreover, throughout petitioner's testimony at both hearings, it is clear petitioner was being questioned concerning Communist activities in Dayton and particularly at Antioch College, which is in Yellow Springs. All three questions as to which petitioner was convicted were pertinent, either on their face or as shown by the government's evidence, to the subject under inquiry.

## V

Petitioner claims that he was entitled to dismissal of the indictment or at least a hearing because of the bias of government employees who were on the grand jury. As we have shown in our brief in *Shelton* v. *United States*, No. 9, pp. 62–76, a defendant cannot challenge an indictment because of the bias of grand jurors unless he can show specific and convincing evidence of strong bias in individual grand jurors. Here, as in *Shelton*, petitioner made no allegations with respect to the bias of individual grand jurors.

## VI

Petitioner contends that the indictment was required to specify the subject under inquiry and the pertinency of the questions to that subject. As shown in our brief in *Shelton, supra*, pp. 78–83, under Rule 7(c) of the Federal Rules of Criminal Procedure and the decisions of this Court and the courts of appeals, an indictment need not specify the subject under inquiry. For the same reasons, it need not provide the reasoning underlying the allegation that the questions were pertinent.

### ARGUMENT

Petitioner was convicted of contempt of Congress for refusing to answer three questions asked him by a Congressional committee concerning his activities within the Communist Party—whether Herbert Reed encouraged petitioner to join the Communist Party when petitioner left Antioch College (count 2); whether Herbert Reed had anything to do with petitioner's getting into the Communist Party (count 3);[1] and whether petitioner had any knowledge of a Communist Party group in Yellow Springs composed, in part, of faculty members and students at Antioch College (count 4). Since petitioner was given a concurrent sentence and a fine on all three counts which was less than the maximum authorized by 2 U.S.C.

[1] It is possible that the questions involved in counts 2 and 3 are so closely related that they should be considered as seeking the same information and therefore that petitioner's conviction on count 3 was improper. It is not necessary, however, to consider this issue, since petitioner received a concurrent sentence on all three counts.

192 under any one count, the judgment below must be affirmed if any one of the counts is upheld. *E.g., Barenblatt* v. *United States,* 360 U.S. 109, 115.

## I

### PETITIONER'S INDICTMENT AND CONVICTION ON SEPARATE COUNTS FOR EACH REFUSAL TO ANSWER WAS PROPER

Petitioner was indicted, convicted, and given concurrent sentences for his refusal to answer three different questions. He contends (Pet. Br. 60–64), that since he refused at the outset to answer any questions on the subject of Communism, he may not be separately indicted, convicted, and punished for subsequently refusing to answer specific questions on that subject. In fact, petitioner claims that he cannot be convicted on any of the three counts, because the indictment charged separate contempts based on each refusal to answer and did not charge that his general refusal to answer questions concerning Communism was a contempt.

Petitioner relies on *United States* v. *Costello,* 198 F. 2d 200 (C.A. 2), certiorari denied, 344 U.S. 874, and *Yates* v. *United States,* 355 U.S. 66. In *Costello,* the witness told a Congressional committee during a hearing that he was too ill to testify and that "under no condition will I testify from here in, until I am well enough" (198 F. 2d at 203). Nevertheless, the committee continued to question the witness, he refused to answer, and he was separately indicted and convicted for each refusal to answer. The Second Circuit reversed the counts based on his refusal to answer the separate questions on the ground that a

witness cannot be punished for refusing to answer questions (198 F. 2d at 204):

> put to him after he had flatly refused to give any further testimony on that particular day. * * * [W]hen the defendant made his position clear, the Committee could not multiply the contempt, and the punishment, by continuing to ask him questions each time eliciting the same answer: his refusal to give *any* testimony. In other words, the contempt was total when he stated that he would not testify, and the refusals thereafter to answer specific questions can not be considered as anything more than expressions of his intention to adhere to his earlier statement and as such were not separately punishable. [Emphasis in original.]

In *Yates*, a witness at a criminal trial refused to answer questions concerning membership in the Communist Party by other persons. She then told the court: "However many times I am asked and in however many forms, to identify a person as a communist, I can't bring myself to do it" (355 U.S. at 68). Two days later, the witness refused to answer eleven questions calling upon her to identify other persons as Communists, and the trial court found her guilty of eleven contempts. This Court reversed the convictions on ten of the specifications, holding (355 U.S. at 73):

> [T]he prosecution cannot multiply contempts by repeated questioning on the same subject of inquiry within which a recalcitrant witness already has refused answers. * * *
>
> * * * [I]t appears that every question fell within the area of refusal established by peti-

> tioner on the first day of her cross-examination. The Government admits, pursuant to the holding of *United States* v. *Costello*, 198 F. 2d 200, that only one contempt would result if Mrs. Yates had flatly refused on June 26 to answer *any* questions and had maintained such a position. We deem it *a fortiori* true that where a witness draws the lines of refusal in less sweeping fashion by declining to answer questions within a generally defined area of interrogation, the prosecutor cannot multiply contempts by further questions within that area. [Emphasis in original.]

Thus, the *Costello* and *Yates* cases establish that a witness cannot be punished for more than one contempt, even though he refuses to answer more than one question, if (1) he states his refusal to answer "any questions," or (2) refuses to answer "questions within a generally defined area of interrogation" and the subsequent questions come within this area. Petitioner is therefore correct that he could not be indicted, convicted, and sentenced separately for his refusal to answer the three questions if, as he claims, he made a "complete refusal at the outset to answer questions concerning communism" (Pet. Br. 61). On the other hand, the *Costello* and *Yates* cases do not require that the witness be indicted for his general statement of refusal to answer. It is perfectly consistent with those cases to hold the witness in contempt for one of his actual refusals to answer a question. Indeed, that is precisely what this Court did in *Yates* by upholding the contempt conviction based on the first specification—which charged the first refusal to

answer—rather than reversing the conviction in its entirety because none of the specifications was based on the broad refusal to answer made two days earlier.* Even if petitioner had stated that he would not answer any questions on the subject of communism, and therefore he could not be properly convicted and sentenced on *all* three counts, we submit that his conviction on *one* of the counts would be valid. And, since he received concurrent sentences on all three counts, his conviction must be affirmed if any one count is valid.

But the fact is that petitioner never refused to answer all questions even on a particular subject. Rather, he invoked the First Amendment in response to particular questions but did not state that he would refuse to answer future questions.

Petitioner's first refusal to answer at the Washington hearings was made in response to a question concerning the circumstances under which he saw Herbert Reed (R. 124). In answering questions up to that point, petitioner had described his educational and employment background; he had admitted being acquainted with John and Bebe Ober and Herbert Reed; and had testified concerning the last time he

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* In *Costello*, unlike the instant case, the witness was charged in one count with refusing to answer any questions and in separate counts with refusal to answer particular questions. Therefore, the court of appeals properly held that all three counts based on particular refusals to answer were invalid since they duplicated the count charging the witness' total refusal to answer. But this does not mean that, where no count alleges a total refusal to answer, every one of the counts charging refusals to answer specific questions is invalid.

had seen Reed (R. 124). Petitioner was then asked as to the occasion he had last seen Reed, and he responded (R. 124):

> I believe I will decline to answer *that* question on the same grounds that I declined to answer similar questions at the public hearing at Dayton. That is, Mr. Tavenner, it is my belief that the First Amendment to the Constitution, as well as the spirit of the whole Bill of Rights, protects me against being forced to disclose any information about my opinions and political beliefs and associations. [Emphasis added.]

Subsequently, petitioner refused in similar fashion to answer particular questions on the ground of the First Amendment (R. 125–131). However, he also answered certain questions, including those admitting he was acquainted with Arthur Strunk who petitioner was told was a member of the Communist Party (R. 131; Hearings, p. 7084) and Walter Lohman, who he knew had been indicted for filing a false non-Communist affidavit and who he was told had been identified by Strunk as a Party member (Hearings, pp. 7086–7087).*

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* During his appearance before the subcommittee in Dayton, the first question petitioner refused to answer was whether he was aware of a Young Communist League organization within the student body while he was a student at Antioch College. He stated that "[i]t is my understanding that the first amendment to the Constitution protects me from being forced to disclose any information about my opinions, political beliefs, and associations. I believe that *that* question violates that privilege, and I therefore decline to answer" (emphasis added) (Hearings, p. 7010). Subsequently, although he refused to answer several questions on the ground of the First Amendment, he admitted knowing Herbert Reed and stated that he did not know Reed's occupation (*id.* at p. 7011).

Thus, petitioner did not flatly refuse to answer any and all questions, nor did he decline to answer questions within a generally defined area. His refusal to answer specific questions concerning his associations and activities did not define any area of refusal. Petitioner's actions amounted merely to an attempt to select the questions he would and would not answer.

## II

### THE TRIAL COURT CORRECTLY HELD THAT, AS A MATTER OF LAW, THE SUBCOMMITTEE WAS PROPERLY CONSTITUTED

Petitioner claims that the trial court committed four separate errors concerning the issue whether the subcommittee was legally constituted: (1) deciding the issues whether the Chairman of the Committee had authority to appoint subcommittees, and whether he could do so by telephone, as matters of law instead of submitting them to the jury (Pet. Br. 56–57); (2) holding that the Committee Chairman could validly appoint subcommittees by telephone (Pet. Br. 57); (3) failing to direct a verdict for petitioner on the ground that there was no evidence that the Chairman of the Committee had appointed the particular subcommittee which heard petitioner's testimony (Pet. Br. 57–59); and (4) instructing the jury in effect that evidence of the appointment of a subcommittee with Representative Scherer as chairman to hold hearings in Dayton constituted proof of the appointment of a subcommittee with Representative Clardy as chairman to hold hearings in Washington (Pet. Br. 59).

These contentions, however, are not available to petitioner since he made no objection to the constitution of the subcommittee at the time he appeared before it. As we have shown in our briefs in *Shelton* v. *United States*, No. 9, this Term, pp. 25–29, and *Liveright* v. *United States*, No. 11, this Term, pp. 29–32, such objections to the committee's procedure cannot be raised for the first time at trial. *United States* v. *Bryan*, 339 U.S. 323, 330–335; *Emspak* v. *United States*, 203 F. 2d 54, 56 (C.A.D.C.), reversed on other grounds, 349 U.S. 190. If petitioner had challenged the constitution of the subcommittee when he appeared before it, his objections could easily have been satisfied by the committee. "To deny the Committee the opportunity to consider the objection or to remedy it is in itself a contempt of its authority and an obstruction of its processes." *United States* v. *Bryan*, 339 U.S. 323, 333. In any event, as we will now show, the trial court did not err.

A. The trial court concluded that the issues whether the Committee Chairman had the authority to appoint subcommittees and whether such appointment could be made by telephone were questions of law which should not be submitted to the jury (R. 144, 156). As observed by the court of appeals (R. 167), these are legal questions within the trial court's province. They are analogous to the question which was decided by this Court in *Christoffel* v. *United States*, 338 U.S. 84, as to the requirements of a quorum when a witness testified before a Congressional committee as contrasted to the issue whether a quorum was actually present, which was left for the jury to decide. They

are also analogous to the issue in *Barenblatt* v. *United States*, 360 U.S. 109, 116–123, as to whether the committee had authority to conduct a particular investigation, which this Court likewise decided as a question of law. The trial court properly left to the jury the only questions of fact: whether the subcommittee was in fact appointed by the Chairman and whether it was acting during petitioner's appearance (R. 144, 157–158).

B. The trial court properly ruled that the Committee Chairman had the power, consistent with the practice of the Committee (R. 87, 116), to appoint subcommittees and to do so by telephone. A House committee may adopt rules, may appoint subcommittees, and may confer on them powers delegated to the Committee. Deschler, *Rules and Manual, United States House of Representatives* (H. Doc. 458, 85th Cong., 2d Sess.) § 735; I Hinds' *Precedents of the House of Representatives* (1907) § 707; III *id.* at §§ 1841, 1842; VI Cannon's *Precedents of the House of Representatives* (1936) § 532; VIII *id.* at § 2214. The Committee on Un-American Activities, on January 22, 1953, passed a resolution authorizing its Chairman to appoint subcommittees from time to time to perform the functions of the Committee (R. 135).[10] Since neither the House nor the Committee

[10] This evidence was introduced by the testimony of the Committee counsel. Although petitioner's counsel asked if the witness had a copy of the resolution in court (the answer was he did not), petitioner's counsel made no objection to the receipt of the oral testimony concerning the resolution (R. 135). There was no evidence contradicting this testimony.

has any rule with respect to the method by which the Chairman must appoint subcommittees (R. 134), there is no authority or reason requiring that such appointment take any particular form or include any specific formalities. See *Meyers v. United States*, 171 F. 2d 800, 811 (C.A.D.C.), certiorari denied, 336 U.S. 912.

Petitioner contends that this Court should hold, apparently as a constitutional requirement, that Congressional committees must appoint their subcommittees by a method "more formal and definitive than a mere telephone call without any record made" (Pet. Br. 57). No judicial decision, however, has ever come close to prescribing the procedure by which a Congressional committee can constitute its subcommittees.[11] The method followed is clearly to be determined by Congress, or, if it does not act, by its committees—not by the courts. The courts can only require that the authority of the subcommittee be shown at the trial for contempt. Here there was ample evidence demonstrating this authority.

C. The evidence before the jury clearly established that the subcommittee before which petitioner appeared was properly appointed. Congressman Scherer, a member of the Committee, testified that he, Congressman Clardy, and Congressman Walter were

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[11] The only case cited by petitioner is *Ex parte Frankfeld*, 32 F. Supp. 915, 916 (D. D.C.). That case, however, holds that the secretary of the committee could not report the contempt of a witness to the House; instead, such a report, like any other report to the House, must be made by the committee itself, "as is prescribed by the Manual of Rules of the House" (*id.* at 917).

appointed by the Chairman of the Committee, at the recess between morning and afternoon hearings, to a subcommittee to hold the hearing that afternoon at which petitioner appeared (R. 85). Congressman Scherer further testified that the appointment of the three Congressmen was made by a telephone call from the Chairman to himself (R. 87)." Announcement of the appointment was made at the start of the afternoon hearing (R. 130). The transcript of the hearing shows that at least two of the three members of the subcommittee were present when petitioner testified (R. 130-131; see R. 85-86, 133).

D. The Committee counsel testified before the jury concerning the appointment of a subcommittee in August 1964, to hold hearings in Dayton, to be composed of Congressmen Scherer, Clardy, and Walter, with Congressman Scherer as chairman (R. 115, 119, 120-121). Petitioner argues that the jury could have been confused by this testimony into believing that this appointment of a subcommittee in August 1964 constituted appointment of the subcommittee which heard petitioner in Washington on November 17, 1964, possibly because the latter subcommittee had the same members, although Congressman Clardy was chairman. On its face, this confusion seems hardly likely since the jury heard testimony from

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"Petitioner relies (Pet. Br. 38) on a somewhat ambiguous statement by Congressman Scherer at the trial suggesting that he was appointed chairman of the subcommittee (R. 87). If this was the meaning of the statement, it constitutes an insignificant error. Congressman Scherer later testified that Congressman Clardy was appointed chairman (R. 99), as the transcript of the hearing shows (R. 120).

Congressman Scherer that the subcommittee before which petitioner appeared in Washington was appointed on the day of the hearing (see *supra*, pp. 23–24). Moreover, petitioner did not object to this testimony of Committee counsel or even attempt, through cross-examination, to show that the appointment in August 1954 was not of the subcommittee which held the hearing in Washington.

It is true, as petitioner emphasizes, that the trial court instructed the jury that it could find that the subcommittee holding the hearing in Washington was properly appointed either on the basis of Congressman Scherer's testimony concerning the Chairman's telephone call on the day of the hearing or on the basis of the Committee counsel's testimony concerning the designation of a subcommittee to hold the hearing in Dayton. We agree that this instruction, insofar as it allowed the jury to find that the subcommittee in Washington was appointed on the basis of the Committee counsel's testimony, did confuse two different subcommittees. However, we do not believe that petitioner was seriously prejudiced since Congressman Scherer's testimony as to the appointment of the subcommittee was uncontradicted. Moreover, petitioner made no objection to these instructions and, indeed, the only instruction he requested on this issue was given (R. 23–24). As Rule 30 of the Federal Rules of Criminal Procedure specifically states: "No party may assign as error any portion of the charge or omission therefrom unless he objects thereto before the jury retires to consider its verdict, stating distinctly the matter to which he objects and the grounds of his objection."

## III

### THE TRIAL COURT PROPERLY HELD, AS A MATTER OF LAW, THAT THE SUBCOMMITTEE'S QUESTIONING OF PETITIONER WAS PURSUANT TO A VALID LEGISLATIVE PURPOSE

Petitioner contends (Pet. Br. 51–55) that (1) the question whether the Committee subpoenaed petitioner to testify in Washington pursuant to a valid legislative purpose should have been submitted to the jury and (2) in any event, the trial court should have found that there was no valid legislative purpose. Both contentions are without merit.

A. Petitioner cites no authority, and as far as we can determine can cite none, for the proposition that the trial court was required to submit to the jury the question whether the Committee was acting pursuant to a valid legislative purpose. On the contrary, this Court has repeatedly decided this issue for itself, thereby implicitly holding that it is not properly a question for the jury. *Kilbourn* v. *Thompson*, 103 U.S. 168; *McGrain* v. *Daugherty*, 273 U.S. 135, 176–180; *Barenblatt* v. *United States*, *supra*, 360 U.S. at 127–133; *Wilkinson* v. *United States*, 365 U.S. 399, 409–412; *Braden* v. *United States*, 365 U.S. 431, 434–435. These implicit holdings are clearly correct since the question whether a committee had a valid legislative purpose, like the issue whether the First Amendment has been violated, is a legal question which is properly decided by the trial and appellate courts.

B. The trial court's decision in this case that the Committee was acting pursuant to a valid legislative

purpose (R. 156) is fully supported by the evidence. Petitioner contends that the only purpose the Committee could have had for subpoenaing him to appear in Washington after he had previously refused to testify in Dayton was to punish him for contempt. This contention, however, wholly rests on an unproved assumption that the Committee believed that petitioner could not be punished for contempt because the subcommittee before which he appeared in Dayton did not have a quorum. Petitioner did not base his refusal to answer on this basis—he relied entirely on the First Amendment (see *supra*, pp. 7, 8)—and therefore, as we show in our briefs in *Shelton* v. *United States*, *supra*, pp. 25–29, and *Liveright* v. *United States*, No. 11, this Term, pp. 29–32, he could not raise this issue at a trial. Petitioner offers no evidence that the Committee erroneously believed that petitioner could not be punished for contempt committed in Dayton.

In any event, there is a more important reason why petitioner's contention is insubstantial. He bases his claim entirely on the bare fact that he had already refused to answer at the hearing in Dayton; but the transcript of neither the hearing nor the evidence at his trial contains even a suggestion that the purpose of the Committee was to punish him for contempt. In these circumstances, petitioner is in effect either imputing improper motives to the Committee on the basis of inference alone or he is making the extreme contention that a Congressional committee can never subpoena a witness after he has appeared before the Committee and has refused to answer some questions. This Court in *Watkins* v.

*United States*, 354 U.S. 178, and *Barenblatt* categorically refused to impute improper motives to Congressional committees. *Watkins* stated that, while Congress has no "power to expose for the sake of exposure," the courts cannot test "the motives of committee members for this purpose. Such is not our function. Their motives alone would not vitiate an investigation which had been instituted by a House of Congress if that assembly's legislative purpose is being served" (354 U.S. at 200). Similarly, *Barenblatt*, in rejecting a claim that the "true objective of the Committee and of the Congress was purely 'exposure'," held that, "[s]o long as Congress acts in pursuance of its constitutional power, the Judiciary lacks authority to intervene on the basis of the motives which spurred the exercise of that power" (360 U.S. at 132). Similarly, in *Wilkinson* v. *United States*, *supra*, 365 U.S. at 412, in answer to a contention that a subcommittee's purpose in subpoenaing a witness was to subject him to public censure, the Court held that "it is not for us to speculate as to the motivations that may have prompted the decision of individual members of the subcommittee to summon the petitioner." These holdings are particularly applicable here since, not only was the Committee acting within the boundaries of Congress' constitutional power but there is a total lack of evidence supporting petitioner's contrary contention.

As to petitioner's suggestion that a Congressional committee can never recall a witness after he has already refused to answer questions, a committee may well have good reason to subpoena a wit-

ness when he has refused to answer its questions. There are several valid reasons for such action. First, the committee may believe that, under different circumstances, the witness will be more cooperative. Second, the committee may wish to emphasize to the witness the importance to its investigation of the information possessed by the witness in order to persuade him to answer. And, third, the committee may wish to ask additional questions.

The uncontradicted evidence in this case shows that the committee decided to subpoena petitioner again for all three reasons. As to the first reason, the transcript of petitioner's appearance at the Dayton hearing shows that the subcommittee was then composed of only one member, which was not a quorum. While this was not the reason which petitioner stated for his refusal to answer, the Committee counsel testified at petitioner's trial that he believed that petitioner was influenced in refusing to answer by the fact that the subcommittee before which he appeared was not legally constituted. Therefore, the Committee counsel testified he thought that petitioner might cooperate if subpoenaed to testify in Washington before a properly constituted tribunal (see *supra*, p. 4).

Second, when the hearings in Dayton were over, the Committee was left with a "missing link" as to its information concerning Communist activity at Antioch College and Yellow Springs (see *supra*, p. 6). Since the Committee had reason to believe that petitioner had knowledge of this missing information, it had a particularly good reason to subpoena him. Before asking the question involved in count 3,

the subcommittee twice described to petitioner the important information that it was missing, in order to convince him to testify (see *supra*, pp. 7, 8-9). The fact that this effort was unsuccessful in convincing petitioner to answer did not make the Committee's purpose in subpoenaing him any less reasonable and proper.

And, finally, the questions on which petitioner was convicted, as well as almost all the other questions, were not asked at the Dayton hearing. At Dayton, the subcommittee asked petitioner concerning Herbert Reed only whether he knew him (he said yes) and whether he knew Reed's occupation (he said no) (Hearings, p. 7011.) He was not asked any question concerning Reed's activities at Antioch College or in Yellow Springs as a Communist Party organizer, which was the subject underlying the questions involved in counts 2 and 3—whether Reed had encouraged petitioner to join the Communist Party or had anything to do with petitioner's getting in. Similarly, the only question asked petitioner at the Dayton hearing concerning Communist activities at Antioch College and in Yellow Springs was whether, when he was a student at Antioch prior to 1942, he knew of the existence of a Young Communist League organization in the student body (Hearings, p. 7010). The question which is involved in count 4 is whether petitioner knew of a Communist Party group in Yellow Springs composed in part of faculty members and students at Antioch College in 1945 or 1946. Thus, all three questions as to which petitioner was convicted had not been asked at the Dayton hearing and indeed involved new areas of inquiry by the Committee. Fur-

thermore, the Committee wanted to question petitioner concerning Walter Lohman. No questions concerning Lohman had been asked at the Dayton hearing. In contrast, at the Washington hearing, the subcommittee asked a series of questions on this subject (see *supra*, p. 9). Clearly, a Congressional committee can subpoena a witness to ask new questions which are pertinent to a subject under inquiry even if he has earlier refused to answer different questions, since it cannot be sure that the witness will refuse to answer these new questions. This is particularly true when the witness makes no broad statement at the earlier hearings indicating that he will refuse to answer all questions or questions within a specified area (see *supra*, pp. 18–20).

We have seen that there were three reasons why the Committee could reasonably believe that petitioner might answer questions at the hearing in Washington although he had refused to answer questions in Dayton. In addition, this Court has suggested that even a brief lapse of time, without anything else, is sufficient justification for a Congressional committee to recall a noncooperative witness in hopes that he has changed his mind. In *Flaxer* v. *United States*, 358 U.S. 147, 151, the committee told a witness who had refused to produce documents to return later with the documents. This Court, in holding that the refusal to produce at the first hearing was excused, said that "for all we know, a witness who was adamant and defiant on October 5 might be meek and submissive on October 15." Here petitioner was subpoenaed to testify in Washington over two months after he had appeared in Dayton.

## IV

### THE GOVERNMENT PROVED AT PETITIONER'S TRIAL THAT THE QUESTIONS WERE PERTINENT TO THE SUBJECT UNDER INQUIRY

Petitioner contends (Pet. Br. 64–66) that the government failed to prove at his trial that the questions were pertinent to the subject under inquiry. This contention must be rejected.[12]

#### A. THE SUBJECT UNDER INQUIRY WAS COMMUNIST ACTIVITIES IN THE DAYTON-YELLOW SPRINGS AREA

At the start of the hearing in Dayton, the chairman of the subcommittee made an opening statement explaining the purpose of the hearing. After explaining the dangers from Communism in the United States, he added, *inter alia* (R. 42):

> Over a considerable period of time the committee received complaints and requests for an investigation from the Dayton-Yellow Springs area. * * * As a result of our staff's investigation and report, the full committee ordered these hearings.

[12] Petitioner does not raise the distinct issue whether "the pertinency of the interrogation to the topic under the congressional committee's inquiry [was] brought home to the witness at the time the questions [were] put to him." *Deutch* v. *United States*, 367 U.S. 456, 467–468. The reason is, undoubtedly, that he failed to object before the subcommittee to the pertinency of the questions and therefore was precluded from raising the issue at his trial (see our brief in *Shelton*, *supra*, pp. 25–29). In any event, as our discussion of the government's proof of pertinency at petitioner's trial will show (see *infra*, pp. 33–34), petitioner was apprised of the subject under inquiry, and the questions he refused to answer were either pertinent on their face to this subject or the subcommittee explained their pertinency to him.

Petitioner was questioned at the hearing concerning Communist activities in Dayton and at Antioch College, which is in Yellow Springs (Hearings, pp. 7010–7011). Petitioner, however, refused to answer these questions.

The Committee counsel reported to the Committee that he thought petitioner's refusal to answer had been influenced by the fact that his appearance had not been before a legally constituted subcommittee and that he might cooperate if called to testify in Washington. The subcommittee had heard considerable testimony at Dayton concerning Communist activities at Antioch College, but there was an important gap in its information which the Committee was very anxious to fill. Since the Committee thought, on the basis of its information concerning petitioner, that he had this information, it subpoenaed him to testify in Washington (see *supra*, pp. 4, 6).

At the start of the hearing in Washington the subcommittee chairman stated that the hearing was a continuation of the September hearings in Dayton, as well as of hearings conducted in Michigan (Hearings, p. 7077). The subcommittee explained at considerable length, during petitioner's appearance in Washington, that it had information of Communist activities at Antioch College. More specifically, the subcommittee told petitioner that it had heard testimony concerning a cell of the Young Communist League at Antioch and that this group was organized and conducted by Herbert Reed (see *supra*, pp. 7–8). The Committee counsel said: "What the committee undertook to indicate was the chain of events that

had been established by Reed organizing this group and then following it up and getting the young people into the Communist Party after going into industry was a very likely thing to happen" (R. 127). Petitioner was then asked the question involved in count 2: whether Herbert Reed encouraged petitioner to join the Communist Party after he left Antioch (R. 127). After petitioner was again told of Communist activities at Antioch, he was asked whether Reed had anything to do with petitioner's getting into the Communist Party (count 3) (R. 128). And after the subcommittee repeated it knew of a Young Communist League group at Antioch in 1939 to 1941 and of a Communist Party group in Yellow Springs in 1945 and 1946, petitioner was asked if he knew of the existence of the latter group in 1945 or 1946 (count 4) (R. 129). Subsequently, petitioner was asked a series of questions all of which concerned his Communist activities in the Dayton-Yellow Springs area (Hearings, pp. 7082–7088).

Petitioner, however, relying solely on a single statement of the Committee counsel at his trial, contends (Pet. Br. 64) that the subcommittee was not investigating any particular subject at the hearings, *i.e.*, it was investigating Communist activities generally. These statements—like similar statements made at the trial in *Shelton* v. *United States*, *supra* (see our brief, pp. 33–36), *Liveright* v. *United States*, *supra* (see our brief, pp. 45–46), *Price* v. *United States*, No. 12, this Term (see our brief, pp. 29–30), and *Whitman* v. *United States*, No. 10, this Term (see our brief, pp. 44–46)—was apparently an attempt to claim that the subcommittee was not required, by the Committee's

authorizing resolution or otherwise, to limit its investigation to a particular subject within the general subject of Communist activities." If another subject within the authority of the Committee was opened up by the testimony of a witness, the subcommittee was not precluded from pursuing it. But this does not mean that, absent the announcement of a new subject, the subcommittee was not investigating the particular subject stated at the hearing.

B. THE QUESTIONS WERE CLEARLY PERTINENT TO THE SUBJECT UNDER INQUIRY

The three questions which petitioner refused to answer and on which he was convicted were plainly pertinent to the subject under inquiry—Communist activities in the Dayton-Yellow Springs area. The questions involved in counts 2 and 3 were whether Herbert Reed had encouraged petitioner to join the Communist Party after he left Antioch College or had anything to do with petitioner's joining the Communist Party. Herbert Reed had been identified by witnesses before the subcommittee—as petitioner was

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"The Assistant United States Attorney clearly stated this position (R. 43):

> It is the position of the Government that this particular committee may call anyone available to it as a witness to inquire about matters that have to do with its resolution, that is, subversive activities, no matter who that person may be, because it has been held that personnel is part of the subject, and the numbers of persons that are engaged in that activity or that know about it would be possible sources of information. In spite of that position, that we do that, we also feel that we are entitled, nevertheless, to offer proof of special pertinency.

told when he testified—as a Party organizer in Dayton and the organizer and leader of a Communist Party organization at Antioch College in Yellow Springs (see *supra*, pp. 7–8). Petitioner had testified at the hearing in Dayton that, when he left Antioch College in 1942, he worked in Dayton and after 1948 in Yellow Springs (see *supra*, p. 4).

The question involved in count 4—whether petitioner had any knowledge of a Communist Party group in Yellow Springs composed, in part, of faculty members and students at Antioch—was pertinent on its face to the subject under inquiry. In addition, the subcommittee had heard testimony—as petitioner was specifically told—that such a group existed in 1945 or 1946 (see *supra*, pp. 6, 7, 8–9).

## V

### PETITIONER WAS NOT ENTITLED TO DISMISSAL OF THE INDICTMENT OR A HEARING ON THE BASIS OF BROAD ALLEGATIONS THAT GOVERNMENT EMPLOYEES GENERALLY ARE BIASED

Petitioner contends (Pet. Br. 23–41) that the indictment should have been dismissed since the grand jury included government employees who were biased against him because the government's loyalty and security programs made them afraid to appear to be sympathetic with Communism. Alternatively, petitioner claims (Pet. Br. 40–41) that he was entitled to a hearing in the district court to allow him to prove

bias."[11] We show, however, in our brief in *Shelton* v. *United States, supra*, pp. 62–64, that a defendant is not entitled to dismissal of an indictment merely because government employees were on the grand jury. We also show in *Shelton*, pp. 64–76, that a defendant is entitled to a hearing to inquire into the motives and beliefs of grand jurors—even if we assume, contrary to the holdings of numerous cases, that a defendant is sometimes entitled to such a hearing—*only* when he alleges specific and convincing facts of strong bias in individual grand jurors. Here, unlike in *Shelton* (see our brief in *Shelton*, pp. 77–78), *Liveright* v. *United States, supra*, and *Price* v. *United States, supra*, petitioner's affidavit (R. 9–15), accompanying his Motion to Dismiss the Indictment (R. 7–9) and his Motion for Hearing on Qualifications of Grand Jurors (R. 5–6), did state some facts underlying his contention of fear and intimidation among government employees generally resulting from the security program which petitioner would show if a

[11] Petitioner further contends (Pet. Br. 40–41) that, even if he was only entitled to a hearing on his motion to dismiss at the time the motion was made, he is now entitled to a dismissal of the indictment. He reasons that a hearing in 1961 or 1962 cannot determine the bias of grand jurors at the time the indictment was returned in 1954. But the courts frequently determine just such issues. While grand jurors who might be questioned in 1962 at a hearing as to their bias in 1954 might be hesitant to admit their bias, this would also have been true if the hearing had been held in 1956 when the petitioner's motions were submitted. Persons do not like to admit bias no matter when they are questioned. But they are at least as likely to admit it when it has occurred years before as in the recent past.

hearing were granted." But like in *Shelton*, *Liveright*, and *Price*, petitioner did not allege bias or fear with regard to any individual grand jurors (see our brief in *Shelton*, pp. 76-77). In these circumstances, the trial court properly refused to grant petitioner a hearing to conduct a general exploration of the motives and beliefs of the grand jurors.

## VI

### THE INDICTMENT WAS NOT REQUIRED TO SPECIFY THE SUBJECT UNDER INQUIRY OR THE PERTINENCY OF THE QUESTIONS TO THE SUBJECT

The indictment alleged that the questions petitioner refused to answer "were pertinent to the question

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"Petitioner's affidavit quotes (R. 12-13) from affidavits of Dr. Marie Jahoda and Dr. Stuart W. Cook, who collaborated on a study of the impact of the security program on Government employees in the District of Columbia. Petitioner's affidavit states that he would call Dr. Jahoda and Dr. Cook, as well as other named students of the security program, to testify if a hearing were granted (R. 14-15).

It is significant that the study made by Dr. Jahoda and Dr. Cook—which is the only basis for petitioner's allegations beyond his own counsel's opinion—was a preliminary investigation for the purpose of formulating plans for more extensive research. It consisted of interviewing only seventy Government employees, from a dozen agencies, of whom "many" had felt the impact of the loyalty and security programs. In describing this study, Dr. Jahoda and Dr. Cook have stated that they "made no attempt to select a sample of respondents which could be said to be representative of any specified population." Jahoda and Cook, *Security Measures and Freedom of Thought: An Exploratory Study of the Impact of Loyalty and Security Programs*, 61 Yale L.J. 295, 296. And Professor Cook states in his affidavit that "no definite statement can be made about the frequency among the total population of government employees reactions similar to those found among those individuals we interviewed."

then under inquiry" (R. 2). Petitioner claims (Pet. Br. 41–50) that the indictment was invalid because it failed to specify the subject under inquiry when petitioner testified or to specify the pertinency of the questions he refused to answer to this subject.

In our brief in *Shelton* v. *United States*, *supra*, pp. 78–83, we argue that petitioner's contention that the indictment was required to state the specific subjects under inquiry is inconsistent with Rule 7(c) of the Federal Rules of Criminal Procedure, and with decisions both of this Court and the courts of appeals.[17] For the same reasons, an indictment which states that the questions are pertinent to the subjects under inquiry need not provide the reasoning underlying this allegation of pertinency.

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[17] Petitioner claims (Pet. Br. 44–45) that the indictment's failure to specify the subject under inquiry prevented him from properly preparing his defense. But, as we have seen (see *supra*, pp. 32–34), the transcripts of both the hearings in Dayton and in Washington, which were available to petitioner, clearly showed the subject under inquiry. The fact that petitioner did not ask for a bill of particulars strongly indicates that he understood the subject under inquiry.

## CONCLUSION

For the foregoing reasons, we respectfully submit that the judgment of the court of appeals should be affirmed.

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